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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.637 OF 2005
IN
SUMMARY SUIT NO.478 OF 2004

Kumar Enterprises)..Plaintiff

Versus

Mahendra Kumar Bhanwarlal Mantri)..Defendant

Mr.S.P. Munghate for the Plaintiff.

Ms.Seema Gupta i/b.Mr.A.M. Saraogi for the Defendant.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 13TH MARCH 2006

P.C.:

. The Plaintiff has taken out the present Summons for Judgment claiming that an amount of Rs.1,43,417/- is payable to it for goods sold and delivered to the Defendant. The Plaintiff has produced the invoices in respect of the goods sold and delivered dated 26th June 2000 for an amount of Rs.48,450/- and dated 28th June 2000 for Rs.47,600/-. The Defendant has acknowledged the receipt of goods and has further stated that they have been received in good condition. This endorsement has been made on the invoices. It is the case of the Plaintiff that Hundies were also executed.

2. The Defendant has denied the claim made by the Plaintiff by raising several objections. However, there can be no dispute that the goods have been sold to the Defendant and the delivery of these goods has been taken by the Defendant as seen by the invoices. In my view, Summary Suit can be maintainable even on the basis of invoices as held by this Court in the case of *Siyaram Silk Mills Ltd.* vs. *Tessival S.P.A.*, **2004 (6) Bom.C.R. 67**. The other defence relating to the registration of the Plaintiff's firm has been answered by the learned Advocate for the Plaintiff by stating that a duplicate copy of the registration certificate has already been applied for by the Plaintiff. He produces the receipt issued by the Registrar of Firms.

3. However, in the circumstances of the case, I am of the view that conditional leave is required to be granted to the Defendant. The Defendant shall deposit a sum of Rs.1,43,417/- within a period of four weeks from today failing which the Plaintiff will be entitled to a decree.

4. If the Defendant deposits the amount as aforesaid, Prothonotary & Senior Master to invest the same in a Fixed Deposit of a Nationalised Bank initially for a period of three years, to be renewed thereafter

till the pendency of the Suit.